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Nos. 765, 766 and 774

IN THE

Supreme Court of the United States

October Term, 1958

No. 765
CHARLES J. GREGORY, and CLYDE L. PAUL, as a Committee for Holders of Kentucky Fuel Gas Corporation 6½% Debentures, and The Vanston Bondholders Protective Committee for Holders of First Mortgage Bonds of Kentucky Fuel Gas Corporation,
Petitioners,
v.
THE COLUMBIA GAS SYSTEM, INC., et al,
Respondents.

No. 766
PAUL E. KERN,
Petitioner,
v.
THE COLUMBIA GAS SYSTEM, INC., et al,
Respondents.

No. 774
ELMO E. ALLEN, et al,
Petitioners,
v.
THE COLUMBIA GAS SYSTEM, INC., et al,
Respondents.

On Petitions for Writ of Certiorari

CONSOLIDATED BRIEF OF BEN WILLIAMSON, JR., AS TRUSTEE OF INLAND GAS CORPORATION AND OF KENTUCKY FUEL GAS CORPORATION, IN OPPOSITION TO THE ABOVE STYLED PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

SELDEN S. McNEER
1000 First Huntington National Bank Building
Huntington, West Virginia
Counsel for Respondent, Ben Williamson, Jr., Trustee

Campbell, McNeer, Woods & Bagley
Robert K. Emerson
Of Counsel.

March 18, 1959

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DEFINITIONS

Inland Gas Corporation, Kentucky Fuel Gas Corporation, and American Fuel & Power Company are debtors in the three proceedings under Chapter X of the Bankruptcy Act pending in the District Court, and are hereinafter referred to respectively as "*Inland*", "*Kentucky*", and "*American*".

The Columbia Gas System, Inc., is hereinafter referred to as "*Columbia*".

Postbankruptcy interest means interest accruing after the institution of a receivership, bankruptcy, or reorganizaton proceeding.

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OPINIONS BELOW

The District Court wrote no opinion. Its order dated June 2, 1958, appears in the Appendices to the Petitions (App. A, Pet. 765, p. 1a). The opinion of the Court of Appeals for the Sixth Circuit has not yet been reported, and appears in the Appendices to the Petitions (App. A, Pet. 765, pp. 4a-6a).

JURISDICTION

The jurisdictional requirements are adequately set forth in the Petitions.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

Petitioners in Nos. 765 and 766 either own or represent bonds and debentures issued by Kentucky. Their statements of "Questions Presented" vary, and in some respects are redundant, and therefore we submit the following as the single question presented by their Petitions:

> Was it error or an abuse of discretion for the Court of Appeals to disallow postbankruptcy interest on the unsecured claims of the holders of the bonds and debentures of Kentucky?

We submit the following counter-statement of the question presented in No. 774:

> Was it error or an abuse of discretion for the Court of Appeals to confirm a plan of reorganization which rejects the claim or interest of the stockholders of American against Inland and denies such stockholders participation in the assets of American or Inland?

STATUTE INVOLVED

The pertinent provisions of the Bankruptcy Act (52 Stat. 840, 11 U.S.C. §1 *et seq.*) are set forth in the Petitions (App. B, Pet. 765, pp. 1b-2b).

STATEMENT OF THE CASE

Inland and Kentucky were incorporated in 1927 and 1928 respectively for the purpose of engaging in the business of producing, transporting and selling natural gas to industrial consumers. American was incorporated in 1928 for the primary purpose of acquiring the stock of Inland and Kentucky. American owns 72.6% of the stock of Inland and 91.12% of the stock of Kentucky. Shortly after their incorporation, Inland, Kentucky and American each had substantial issues of debt securities. Default was made on these securities in 1930, and these proceedings followed, first as equity receiverships, afterwards as proceedings under §77B of the Bankruptcy Act, and finally as a consolidated corporate reorganization proceeding under Chapter X of the Bankruptcy Act in the District Court for the Eastern District of Kentucky. The past history of the debtors is fully disclosed in the opinions of the Court of Appeals for the Sixth Circuit, referred to in the opinion of the court below.

Inland has been operated successfully by the Trustee, with the result that in excess of $10,000,000 has been distributed in full discharge of the claims of all of Inland's direct creditors, other than Columbia. The instant plan of reorganization values the remaining Inland estate at $10,538,800 as of December 31, 1957. As of the same date, Kentucky and American had current assets available for satisfaction of claims of $9,259.99 and $569,725.53, respectively.

The claims of the creditors of the debtors as of December 31, 1957, insofar as pertinent, were as follows:

Claimant	Principal	Accrued Interest	Total
Columbia's Claims against Inland	$2,143,468	$3,785,747	$5,929,215
Claims of Holders of Kentucky Bonds and Debentures, other than Columbia	2,778,600	4,759,971	7,538,571
Claims of American Noteholders, other than Columbia	1,905,100	2,933,854	4,838 954

Inland's bonds and debentures held by Columbia are secured by mortgages covering the assets and properties of Inland. The American notes are secured by a pledge of the Inland stock owned by American. The Kentucky bonds and debentures are not secured.

During the course of these proceedings, the claims of Columbia against the debtors were subordinated to "the claims of all other creditors of every class." Also, the American noteholders, other than Columbia and the holders of Kentucky bonds and debentures, other than Columbia, were adjudicated to be quasi creditors of Inland and thereby entitled to satisfy their claims out of the Inland estate. *Columbia Gas & Electric Corp. v. United States*, 151 F. 2d 461, 470, reh. and mod. den., 153 F. 2d 101; *In re Inland Gas Corp.*, 187 F. 2d 813; 211 F. 2d 381, cert. den. 348 U. S. 840.

Under a former plan of reorganization, interest had been provided for the holders of Kentucky bonds and debentures, other than Columbia, but, by an order of the District Court, such postbankruptcy interest was denied and the District Court refused to confirm the plan. The action of the District Court in this regard was affirmed by the Court of Appeals for the Sixth Circuit, Simon, J., dissenting, *In re Inland Gas Corp.*,

241 F. 2d 374, and the petitioners in Nos. 765 and 766 then filed petitions for writ of certiorari with this Court, but these petitions were denied, and, as well, a petition for a rehearing upon such denial was also denied. 355 U. S. 838, 879.

Upon remand, and at the direction of the District Court, and in response to the mandate of the Court of Appeals, the instant plan of reorganization was prepared by the Trustees, denying postbankruptcy interest to the holders of Kentucky bonds and debentures. The plan provides for full payment of postbankruptcy interest to the public holders of American notes which are secured by a pledge of the Inland stock owned by American. Based upon the valuation of the Inland estate which was approved by both the District Court and the Court of Appeals, the principal of Columbia's direct claims against Inland will be discharged in full and a substantial portion of the interest accruing on Columbia's secured claims against Inland will be satisfied, all by the issuance of stock in reorganized Inland.

The instant plan of reorganization was confirmed by order of the District Court entered June 2, 1958, and that order was affirmed by the decision of the Court of Appeals for the Sixth Circuit rendered on January 15, 1959, which petitioners now seek to review.

After more than twenty-eight years of operation [illegible]he debtors' properties by receivers and trustees, and [illegible]ter the legal issues arising from the claims of creditors have been submitted on seven different occasions to the Court of Appeals and on one occasion to this Court, the end of this protracted litigation is, at long last, now in sight if the petitions for writs of certiorari now pending are denied.

ARGUMENT

I. The decision below does not present any important questions of federal law.

The issue presented in Nos. 765 and 766 does not concern the broad question of the accrual and payment of postbankruptcy interest in a proceeding under the Bankruptcy Act, and particularly Chapter X of the Bankruptcy Act. This issue is uniquely narrow, because the question of postbankruptcy interest must be examined and determined within the context of the equitable subordination of the claims of Columbia, which has been previously adjudicated and is the law of the case. The technique and doctrine of equitable subordination in a corporate reorganization proceeding under Chapter X of the Bankruptcy Act is rarely utilized. Accordingly, any decision of this Court with regard to the scope of the rule denying the accrual and payment of postbankruptcy interest as applied to the unusual facts and circumstances of these proceedings would not have universal application.

Moreover, since the postbankruptcy interest question presented in these proceedings is inextricably linked with the doctrine or technique of equitable subordination, and since the application of the doctrine or technique of equitable subordination involves in turn difficult questions of fact, the District Court and the Court of Appeals, both of which are intimately familiar with these proceedings, are certainly in a position to speak with authority and finality.

Finally, the question of postbankruptcy interest has already been litigated and re-litigated. This question first arose by reason of the order of the District Court dated March 14, 1956, denying postbankruptcy

interest to the holders of Kentucky bonds and debentures. Petitioners in Nos. 765 and 766 appealed from this decision, and the order of the District Court, after full hearing, was affirmed by the Court of Appeals. *In re Inland Gas Corp.*, 241 F. 2d 374. Thereafter the petitioners filed in this Court petitions for writ of certiorari to review the judgment of the Court of Appeals. These petitions were denied by this Court, 355 U. S. 838, and thereafter, a petition for rehearing on the denial of the petitions for writ of certiorari was denied. 355 U. S. 379. After formulation of the instant plan of reorganization pursuant to the judgment and mandate of the Court of Appeals, the same postbankruptcy interest question was again presented to the District Court at the hearing on confirmation of the instant plan of reorganization. The District Court confirmed the plan, and again denied postbankruptcy interest to the petitioners. Thereafter petitioners again appealed to the Court of Appeals, raising the same question as to the disallowance of postbankruptcy interest. After this question had been again fully briefed by all parties, and after lengthy argument at a hearing upon a motion to dismiss the appeals, the Court of Appeals, on January 15, 1959, dismissed the appeals and affirmed the order of the District Court confirming the instant plan of reorganization. *In re Inland Gas Corp.*, ...F. 2d....., App. A, Pet. 765, p. 1a.

In view of the exhaustive litigation and relitigation of the postbankruptcy interest question, and in view of the action of this Court in previously denying petitions for writ of certiorari and a petition for rehearing upon the denial of the petitions for writ of certiorari, it is submitted that this question has already been decided with authoritative finality.